

REMARKS

The Official Action of September 13, 2007 and the references cited therein have been carefully considered. The Applicant respectfully requests reconsideration of the application in view of the foregoing amendments and the following remarks. The claims have been amended to be directed to the elected invention. Due to extensive amendments in the claims, for convenience and accuracy in entering the amendment, Claims 1-12 have been canceled in their entirety and rewritten as new Claims 19-25. Claims 13-18 have been canceled without prejudice.

Claims 19-25 are pending in the application.

1. Restriction Requirement

Under 35 U.S.C. 121 and 372, the Examiner previously required additional restriction among 35 various groups, each of which is further divisible with respect to the substituent moieties therein.

Applicants again respectfully assert that restriction is improper. As stated in MPEP §803 there are two criteria for a proper requirement for restriction between patentably distinct inventions: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the Examiner if restriction is not required. As the Examiner noted, the designated Groups are patentably distinct as claimed. Applicants respectfully assert, however, that there will not be a serious burden on the Examiner if restriction is not required. Consistent with PCT Rules 13.1 and 13.2, the claimed compounds possess unity of invention because they have a significant structural element qualifying as the special technical feature that defines a contribution over the prior art. The common structural core which is found among the compounds which are prepared and employed in accordance with the present invention provides unity of invention and a common link among the above-noted groups, thus facilitating examination. Because no serious burden for examination is present if restriction is not required, Applicants respectfully request withdrawal of the requirement for restriction.

In the interest of compact prosecution, Applicants affirm their election of Group I and have amended the claims to be directed to the elected invention.

This election is being taken without prejudice to the filing of a divisional application directed to the non-elected subject matter. In accordance with the third sentence of 35 U.S.C. § 121, a patent issuing from the instant application should not be a reference against a divisional application filed before the issuance of such patent.

II. Rejection of Claims 15-18 Under 35 U.S.C. § 112, First Paragraph

Claims 15-18 stand rejected under 35 U.S.C. § 112, first paragraph, for lack of enablement. The Examiner was concerned regarding the use of the compounds of formula I for particular indications. Although Applicants respectfully assert that the specification fully enables such claims, in the interest of compact prosecution, these claims have been canceled. Accordingly, the rejection of Claims 15-18 under 35 U.S.C. § 112, first paragraph, for lack of enablement has been rendered moot.

III. Rejection of Claims 15-18 Under 35 U.S.C. § 101

Claims 15-18 stand rejected under 35 U.S.C. § 101 for lack of utility. The Examiner was concerned regarding the format of the claims. Although Applicants respectfully assert that the claims have utility, in the interest of compact prosecution, these claims have been canceled. Accordingly, the rejection of Claims 15-18 under 35 U.S.C. § 101 for lack of utility has been rendered moot.

IV. Rejection of Claims 15-18 Under 35 U.S.C. § 112, Second Paragraph

Claims 15-18 stand rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness. The Examiner was concerned regarding the terminology in the claims. Although Applicants respectfully assert that the claims clearly describe the invention, in the interest of compact prosecution, these claims have been canceled. Accordingly, the rejection of Claims 15-18 under 35 U.S.C. § 112, second paragraph, for indefiniteness has been rendered moot.

V. Objection to Non-Elected Subject Matter

Claims 1-18 stand objected to as containing non-elected subject matter. In view of the foregoing amendments, the claims have been amended to be directed to the elected subject matter and the objection to the claims should be withdrawn.

Applicants respectfully contend that the application is allowable and a favorable response from the Examiner is earnestly solicited.

Respectfully submitted,

By 
J. Eric Thies
Reg. No. 35,382
Attorney for Applicant
MERCK & CO., Inc.
P.O. Box 2000
Rahway, New Jersey 07065-090 7
(732) 594-3904

Date: December 13, 2007